

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

JOSHUA AARON JAMES,

Defendant(s).

Case No.2:23-CR-150 JCM (EJY)

ORDER

Presently before the court is defendant Joshua James' motion to continue the trial currently scheduled for April 21, 2025. (ECF No. 128). The government responded in opposition. (ECF No. 129). For the reasons stated below, the court grants James' motion and will continue the trial for 45 days.

**I. Background**

James was arrested and charged with five counts of firearm-related felonies in August 2023. (ECF No. 1). The government's superseding indictment specifically charges James with the offense of Felon in Possession of a Firearm under 18 U.S.C. § 922(g)(1). (ECF No. 62). In May 2024, the Ninth Circuit issued a split panel decision holding § 922(g)(1) unconstitutional as to nonviolent offenders. *United States v. Duarte*, No. 22-50048 (9th Cir. May 9, 2024). Accordingly, James moved to dismiss the charge against him pursuant to new authority under *Duarte*, arguing the same standard applies to him.

The Ninth Circuit thereafter vacated the decision and agreed to rehear the *Duarte* case *en banc*. *See id.* (July 17, 2024). The parties had agreed to several prior continuances for various reasons. In September 2024, the parties stipulated to continue trial again pending the *Duarte* decision and outcome of James' motion to dismiss. (ECF No. 107). The Ninth Circuit held oral

1 argument on December 11, 2024. *Duarte*, No. 22-50048. A decision is still pending. Thus, this  
2 court has yet to rule on James' motion.

3 James now moves to continue trial for an additional 45 days to allow the Ninth Circuit  
4 more time to issue its decision in *Duarte*. James argues that pre-trial clarity on the *Duarte* issue  
5 will effectuate judicial efficiency and help him decide how to proceed with the rest of his case.  
6 The government argues that (1) the Speedy Trial Act necessitates a quick resolution to James'  
7 case, and (2) in the absence of a *Duarte* decision, the court has legitimate authority under *United*  
8 *States v. Vonxgay*, 594 F.3d 1111 (9th Cir. 2010) to rule on James' motion.

## 9 II. Legal Standard

10 The Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*, requires that a criminal defendant be  
11 brought to trial within seventy days after he is charged or makes an initial appearance, whichever  
12 is later. 18 U.S.C. § 3161(c)(1). However, under 18 U.S.C. § 3161 (h)(7)(a), the court may grant  
13 a continuance on a motion if it finds that "the ends of justice served by taking such action outweigh  
14 the best interest of the public and the defendant in a speedy trial" (the "ends of justice" provision).

15 In determining whether an "ends of justice continuance" is appropriate, a district court must  
16 consider, *inter alia*, whether the failure to grant the continuance will result in a miscarriage of  
17 justice; whether the case is so unusual or complex that it is unreasonable to expect adequate  
18 preparation; and whether the case, while not unusually complex or unusual, would nonetheless  
19 deny counsel the reasonable time necessary for effective preparation. *See* 18 U.S.C. §  
20 3161(h)(7)(B).

## 21 III. Discussion

22 Having considered the parties' arguments, the court finds a continuance is appropriate  
23 under the circumstances to achieve the ends of justice. 18 U.S.C. § 3161 (h)(7)(a). Indeed, the  
24 Ninth Circuit is actively reviewing a case that involves questions of law that this court must  
25 necessarily consider in James' motion to dismiss. The court agrees that waiting for an *en banc*  
26 decision will allow this court to rule on James' motion with finality and potentially conserve  
27 judicial resources that may result from bringing an appeal.

1 The parties have also stipulated or otherwise agreed to continue trial seven times prior to  
2 this request. The government argues a further delay is unjustified, but the parties' September  
3 stipulation memorializes both parties' intent to allow the Ninth Circuit to clarify applicable law  
4 before proceeding to trial. (ECF No. 107). The court finds that denying James a continuance on  
5 the same basis that it previously granted one would result in a miscarriage of justice.

6 A district court has broad discretion to grant or deny a continuance. *United States v.*  
7 *Kloehn*, 620 F.3d 1122, 1126 (9th Cir.2010). An "ends of justice continuance...must be  
8 specifically limited in time [and] must be justified on the record with reference to the facts as of  
9 the time the delay is ordered." *United States v. Lloyd*, 125 F.3d 1263, 1268 (9th Cir.1997). James  
10 requests only a short continuance for reasons that bear on his defense. The court therefore uses its  
11 discretion to grant a 45-day continuance and allow time to consider the Ninth Circuit's decision in  
12 *Duarte* as it applies to James' pending motion to dismiss.

13 **IV. Conclusion**

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that defendant Joshua James'  
16 motion to continue trial (ECF No. 128) be, and the same hereby is, GRANTED.

17 IT IS FURTHER ORDERED that the calendar call currently scheduled for April 16, 2025, be  
18 vacated and CONTINUED to June 11, 2025, at 1:30 p.m., and the trial currently scheduled for  
19 April 21, 2025, be vacated and CONTINUED to June 16, 2025, at 9:00 a.m.

20 DATED April 4, 2025.

21  
22   
23 UNITED STATES DISTRICT JUDGE  
24  
25  
26  
27  
28